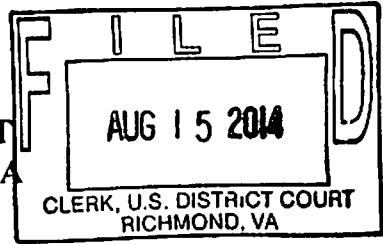


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



DeANDREW LAMONT CARTER,)
)
Petitioner,)
)
v.) Civil Action No. 3:14CV477-HEH
)
)
UNITED STATES OF AMERICA,)
)
)
Respondent.)

MEMORANDUM OPINION
(Dismissing 28 U.S.C. § 2241 For Want Of Jurisdiction)

DeAndrew Lamont Carter, a federal inmate proceeding *pro se*, submitted a 28 U.S.C. § 2241 Petition. (“§ 2241 Petition,” ECF No. 1.) Carter paid the \$5.00 filing fee. Accordingly, the action will be filed. Nevertheless, for the reasons set forth below, § 2241 Petition will be dismissed for want of jurisdiction.

I. Procedural History

Carter pled guilty to possession of a firearm and ammunition by a convicted felon. See *United States v. Carter*, Nos. 3:08CR527-HEH, 3:11CV212-HEH, 2013 WL 5353055, at *1 (E.D. Va. Sept. 24, 2013). The Court found Carter qualified for an enhanced sentence under the Armed Career Criminal Act (“ACCA”) and sentenced Carter to 188 months of incarceration. *Id.* On September 24, 2013, the Court denied a 28 U.S.C. § 2255 motion filed by Carter challenging his sentence. *Id.* at *3. In his present § 2241 Petition, Carter once again challenges his sentence under the ACCA.

II. Analysis

The United States Court of Appeals for the Fourth Circuit has stressed that an inmate may proceed under § 2241 to challenge his conviction “in only very limited circumstances.” *United States v. Poole*, 531 F.3d 263, 269 (4th Cir. 2008) (citation omitted) (internal quotation marks omitted). The “controlling test,” *id.*, in the Fourth Circuit is as follows:

[Section] 2255 is inadequate and ineffective to test the legality of a conviction when: (1) at the time of conviction, settled law of this circuit or the Supreme Court established the legality of the conviction; (2) subsequent to the prisoner’s direct appeal and first § 2255 motion, the substantive law changed such that the conduct of which the prisoner *was convicted is deemed not to be criminal*; and (3) the prisoner cannot satisfy the gatekeeping provisions of § 2255 because the new rule is not one of constitutional law.

In re Jones, 226 F.3d 328, 333–34 (4th Cir. 2000) (emphasis added). The Fourth Circuit formulated this test to provide a remedy for the “fundamental defect presented by a situation in which *an individual is incarcerated for conduct that is not criminal* but, through no fault of his own, has no source of redress.” *Id.* at 333 n.3 (emphasis added).

Carter fails to satisfy the second prong of *In re Jones*. *See id.* at 334. Carter fails to demonstrate that “subsequent to [his] direct appeal and [his] first § 2255 motion, the substantive law changed such that the conduct of which [he] *was convicted is deemed not to be criminal*.” *Id.* (emphasis added). Possession of a firearm and ammunition by a convicted felon remains a crime. *See Farrow v. Revell*, 541 F. App’x 327, 328 (4th Cir. 2013) (concluding petitioner could not utilize § 2241 to challenge his armed career

criminal status); *but see Whiteside v. United States*, 748 F.3d 541, 555 (4th Cir. 2014) (concluding inmate's erroneous sentence as a career offender constituted a fundamental miscarriage of justice), *rehearing en banc granted*, --- F. App'x ----, No. 13-7152, 2014 WL 33779981, at *1 (4th Cir. July 10, 2014). Accordingly, the Court will dismiss Carter's 28 U.S.C. § 2241 Petition for want of jurisdiction.

An appropriate Order shall issue.

HEH

/s/

HENRY E. HUDSON
UNITED STATES DISTRICT JUDGE

Date: August 13, 2014
Richmond, Virginia